



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

OCT 07 2016

REPLY TO THE ATTENTION OF

WU-16J

Ms. Leatra Harper
Managing Director
Fresh Water Accountability Project
P.O. Box 473
Grand Rapids, Ohio 43522

Dear Ms. Harper:

I am writing in response to your August 31, 2016 letter to Administrator Gina McCarthy. The letter detailed six complaints about: Ohio's Class II Underground Injection Control (UIC) program; management and disposal of hydraulic fracturing waste products; discharges of oil and gas wastewater to wastewater treatment plants (WWTP); and air emissions from oil and gas production and processing facilities.

Class II UIC wells in Ohio have been subject to State requirements since 1983, when EPA approved Ohio's Class II UIC program. EPA periodically reviews the effectiveness of approved state UIC programs. The most recent review of Ohio's Class II UIC program concluded in 2015. During the review, EPA assessed public participation practices, permits (including "Chief's Orders"), compliance evaluation actions, and enforcement actions. EPA concluded that the Ohio Department of Natural Resources (Ohio DNR) runs a good quality program for Class II wells, and is operating the program in a manner that is consistent with EPA's approval. EPA provided a copy of the review report to you in September 2015.

Regarding the six complaints from your letter, EPA would like to respond in the order that you enumerated.

- 1) In your letter, you stated that Ohio DNR has not written rules to govern how facilities like Patriot Water Treatment operate, how or if these facilities would be inspected, and what would be considered a violation. Even if this is true, under the federal General Pretreatment Regulations (Title 40 of the Code of Federal Regulations (40 C.F.R.) Part 403) and Chapter 3745-3 of the Ohio Administrative Code, the Warren WWTP must develop and implement procedures to regulate non-domestic users of the treatment plant including Patriot. Such procedures are intended to ensure, in part, that discharges from non-domestic users do not interfere with operation of the WWTP and do not pass through the WWTP in violation of effluent limits in the plant's National Pollutant Discharge Elimination System (NPDES) permit. Specifically, the Warren WWTP must:

- a. Develop and implement local limits in order to implement general and specific prohibitions,

- b. Identify the character and volume of pollutants discharged by Patriot to the Warren WWTP,
- c. Issue a control mechanism, or permit, to Patriot to ensure compliance with applicable pretreatment standards and requirements,
- d. Receive and analyze reports submitted by Patriot,
- e. Conduct random sampling, surveillance, and inspection activities at Patriot,
- f. Investigate instances of noncompliance by Patriot, and
- g. Develop and implement an enforcement response plan.

EPA intends to review the Warren WWTP NPDES draft permit against Clean Water Act requirements prior to issuance.

- 2) We share your commitment to preventing contamination of Underground Sources of Drinking Water (USDW), but would like to use this opportunity to correct some of the statements in the August 31 letter. Crude oil and diesel fuel smell very similar so smell alone cannot be used to determine the presence of diesel fuel. Drilling muds are used when drilling a well. This is not the same as hydraulic fracturing which is done after a well is drilled. Hydraulic fracturing is exempt from UIC provisions under the Safe Drinking Water Act with the exception of hydraulic fracturing using diesel fuel. In cases where diesel fuel is used for hydraulic fracturing, the owner/operator of that well must obtain authorization from the agency that regulates Class II wells in that state. Flowback fluids from hydraulic fracturing (with or without diesel fuels) can be legally disposed of down Class II UIC wells.
- 3) Thank you for bringing the Antero matter in Noble County to our attention. Until your letter, EPA had not received any complaints and we were not aware of any potential air emission issues at this site. Please ask Mr. and Ms. Bond to contact Natalie Topinka at (312) 886-3853 or topinka.natalie@epa.gov so we can get more information on the facility or facilities at issue.
- 4) EPA has recently received complaints from Ms. Lynn about the Humphreys compressor station near Barnesville, Ohio. On July 25, 2016, EPA staff inspected the facility, conducted ambient air monitoring in the area, and interviewed nearby residents, including Ms. Lynn. EPA continues to investigate compliance with applicable regulations at the Humphreys facility.
- 5) In response to your comments regarding air permitting, regulations at 40 C.F.R. § 70.2 define major source for the purpose of Clean Air Act Title V applicability, and specifically address oil and gas facilities. Regarding Ohio EPA's recently proposed General Permit for midstream compressor stations, EPA reviewed the draft General Permit and provided comments on two occasions. The first occasion was on September 18, 2015, during the interested party review period. Select comments were noted in the response to comment document issued by the Ohio EPA on April 7, 2016, which is available to the public at <http://epa.ohio.gov/Portals/27/genpermit/RCv7.doc>. The second occasion was on May 18, 2016, as part of the official public comment period on the draft permits. A copy of EPA Region 5's comments letter can be found at

[https://yosemite.epa.gov/r5/r5ard.nsf/8a853ab744d510c68625745800533fd5/af4e14a76fe2d1f586257fbf007a7c48/\\$FILE/gp-compressor.pdf](https://yosemite.epa.gov/r5/r5ard.nsf/8a853ab744d510c68625745800533fd5/af4e14a76fe2d1f586257fbf007a7c48/$FILE/gp-compressor.pdf)

- 6) This complaint focused on the Ohio DNR's Class II UIC program. Please see the second paragraph on the first page of this letter. Also, please note that fluids from hydraulic fracturing, along with other fluids generated in association with oil and gas production, are often exempt from hazardous classification under the Resource Conservation and Recovery Act. Nevertheless, they should still be handled and disposed of in a manner that reflects their ability to negatively impact USDW and human health. Ohio DNR's public notice rules are part of their approved UIC program. We have shared your concerns about publication of public notices with Ohio DNR. In response, the State said they look to publish public notices in papers that have circulation in the area of the proposed injection well. In the case of the site in Monroe County, that paper was in Washington County.

Regarding the Ohio DNR's enforcement program, EPA's review found that Ohio DNR is implementing the Class II program, including the enforcement element, in accordance with our approval. Ohio DNR referred three cases covering 10 wells to the Ohio Attorney General in the past six months. EPA will continue to work with the Ohio DNR to ensure that wells in non-compliance receive timely and appropriate enforcement actions and that the State aggressively utilizes its available funds to plug orphaned wells.

If you have additional questions, please contact Stephen Jann, Chief of the UIC Branch, at jann.stephen@epa.gov or (312) 886-2446.

Sincerely,



for

Tinka G. Hyde
Director, Water Division

cc: Rick Simmers, Ohio DNR
Bob Hodanbosi, Ohio EPA
Tiffany Kavalec, Ohio EPA